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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,589	03/02/2004	Glenn Klecker	DBH:0756.0840	3452

152 7590 11/10/2005

CHERNOFF, VILHAUER, MCCLUNG & STENZEL
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PORTLAND, OR 97204-3157

EXAMINER

HAMILTON, ISAAC N

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,589

Applicant(s)

KLECKER ET AL.

Examiner

Isaac N. Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08/22/05, 10/31/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "said channel" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "said side walls" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al (5,745,997), hereafter Berg, in view of James (2,310,959). Berg discloses everything as noted in Diagram 1 below. Further note that the jaw is a bypass jaw and the cutter is a bypass jaw; the cutting tool is capable of being used as a pruning shear; folded position shown in figure 2; channel 44; side walls 68; base 66, 106; abutment face 116; supporting metal portion 174. Berg does not disclose a sharpened cutter mounted removably on the blade carrier, however,

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James teaches sharpened cutter 8 mounted removably on the blade carrier 5. It would have been obvious to provide a sharpened cutter mounted removably on the blade carrier in Berg as taught by James in order to replace the blade. Regarding claims 15 and 17, note that the leg has a width and therefore extends laterally and is parallel to the channel base, and that the tang is parallel to the side wall 68 as shown in the figures. Regarding claim 18, note that the method in which the leg is formed does not further limit the structure of the apparatus, and that the leg and the tang are a single piece of metal.

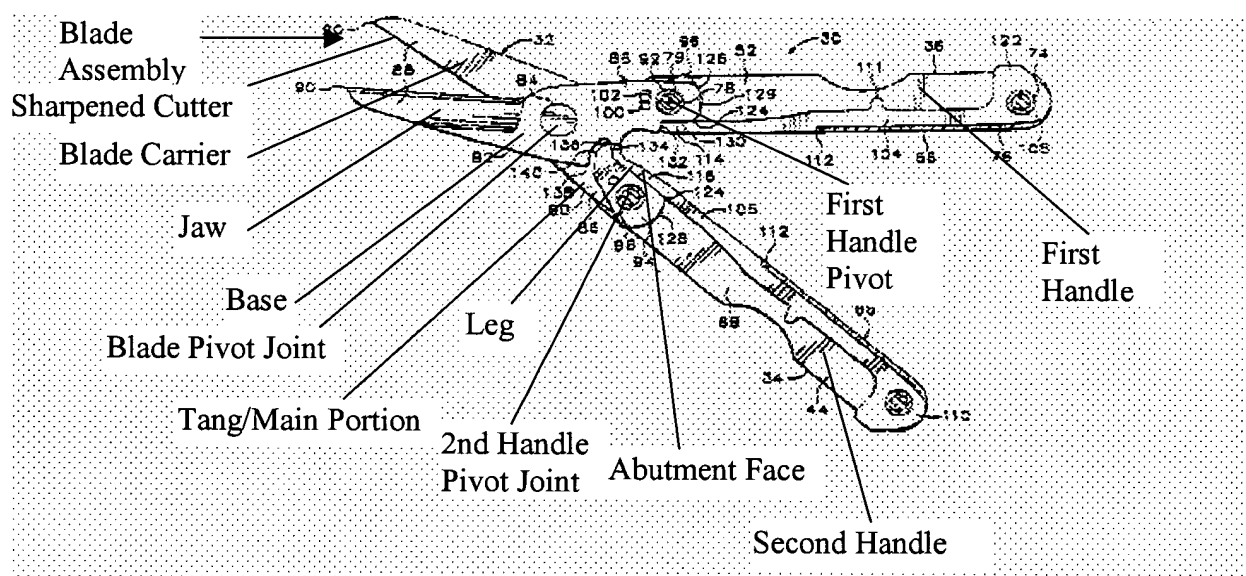


Diagram 1. Figure 9 of Berg is shown above in the extended, operative position.

5. Claims 5, 6, 7, and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Pocket Gardener (FN). Berg discloses everything as noted above, but does not disclose cushioning portions on the outer surfaces of the handles. However, Pocket Gardener teaches cushioning portions on the outer surfaces of the handles as shown in the figures. It would have been obvious to provide cushioning portions on the outer surface of the handles in Berg as taught by Pocket Gardener in order to provide extra gripping ability as well as a more

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comfortable fit in the user's hand. Note elongate margin, outer margin, outer portion and outer face is interpreted to be an outer surface of an element.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Thompson et al (5,483,747), hereafter Thompson. Berg discloses everything as noted above, and discloses a fastener in column 5, lines 2-6. However, Berg does not disclose a tension screw and a locknut. However, Thompson teaches tension screw 51 and locknut 57. It would have been obvious to provide a tension screw and a locknut in Berg as taught by Thompson in order to remove the fastener with common household tools.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Seber (5,485,677). Berg discloses everything as noted above, but does not disclose a hook portion and a sharpened edge in a throat portion. However, Seber teaches hook portion 36 and sharpened edge 56 in a throat portion 52. It would have been obvious to provide a hook portion and a sharpened edge in a throat portion in Berg as taught by Seber in order to increase the utility of the apparatus.

8. Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Mizutani et al (2002/0124415A1), hereafter Mizutani. Berg discloses everything as noted above, but does not disclose a cavity including a spring with first and second opposite ends. However, Mizutani teaches cavity 5, 6 including spring 13 with first and second opposite ends 16. It would have been obvious to provide a cavity including a spring with first and second opposite ends in Berg as taught by Mizutani in order to increase the rate that the jaw and the sharpened cutter separate and increase overall cutting speed of the apparatus.

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9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berg in view of Rausse (1,426,214). Berg discloses everything as noted above, but does not disclose a blade lock. However, Rausse teaches blade lock 21, 17, 18, 19, 16. It would have been obvious to provide a blade lock in Berg as taught by Rausse in order to slip the apparatus into a pocket while not in use. Note that the elements 21, 17, 18 and 19 may be provided on the end of the second handle; open position shown in figure 2; closed position in figure 1; when one of the handles is in the folded position, the blade lock in the engaged position shown in figure 1; lock pivot 23; shoulder 132 in Berg; catch body 19 in Rausse.

Response to Arguments

Applicant's arguments have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Berg, James, Pocket Gardener, Thompson, Seber, Mizutani and Rausse.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday through Friday between 8am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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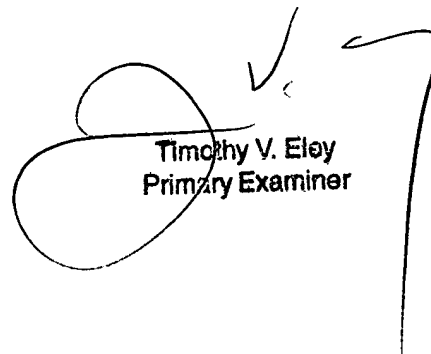
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IA

IH

November 7, 2005

A large, stylized handwritten signature in black ink, consisting of a large loop and a long vertical stroke.

Timothy V. Eley
Primary Examiner